

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

MARC RUSSELL TRUSTY, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 WARDEN RENEE BAKER, *et al.*, )  
 )  
 Respondents. )  
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3:13-cv-00034-RCJ-WGC

**ORDER**

Marc Russell Trusty, a Nevada prisoner, has submitted a petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254 (ECF #1-2) and has paid the filing fee (*see* ECF #4). Therefore, the habeas petition shall be filed and docketed, and it shall be served upon the respondents.

A petition for federal habeas corpus should include all claims for relief of which petitioner is aware. If petitioner fails to include such a claim in his petition, he may be forever barred from seeking federal habeas relief upon that claim. *See* 28 U.S.C. §2254(b) (successive petitions). If petitioner is aware of any claim not included in his petition, he should notify the court of that as soon as possible, perhaps by means of a motion to amend his petition to add the claim.

Petitioner has also submitted a motion for the appointment of counsel (ECF #1-3). There is no constitutional right to appointed counsel for a federal habeas corpus proceeding. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th Cir.1993). The decision to appoint counsel is generally discretionary. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir.1986), cert.

1 denied, 481 U.S. 1023 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir.), cert. denied, 469 U.S.  
2 838 (1984). However, counsel must be appointed if the complexities of the case are such that denial of  
3 counsel would amount to a denial of due process, and where the petitioner is a person of such limited  
4 education as to be incapable of fairly presenting his claims. *See Chaney*, 801 F.2d at 1196; *see also*  
5 *Hawkins v. Bennett*, 423 F.2d 948 (8th Cir.1970). The petition in this action appears sufficiently clear  
6 in presenting the issues that petitioner wishes to raise. Counsel is not justified at this time. The motion  
7 is denied.

8 **IT IS THEREFORE ORDERED** that the Clerk shall **FILE** and **ELECTRONICALLY**  
9 **SERVE** the petition (ECF #1-2) on the respondents.

10 **IT IS FURTHER ORDERED** that respondents shall have **forty-five (45)** days from  
11 entry of this order within which to answer, or otherwise respond to, the petition. In their answer or other  
12 response, respondents shall address any claims presented by petitioner in his petition as well as any  
13 claims presented by petitioner in any Statement of Additional Claims. Respondents shall raise all  
14 potential affirmative defenses in the initial responsive pleading, including lack of exhaustion and  
15 procedural default. **Successive motions to dismiss will not be entertained.** If an answer is filed,  
16 respondents shall comply with the requirements of Rule 5 of the Rules Governing Proceedings in the  
17 United States District Courts under 28 U.S.C. §2254. If an answer is filed, petitioner shall have **forty-**  
18 **five (45) days** from the date of service of the answer to file a reply.

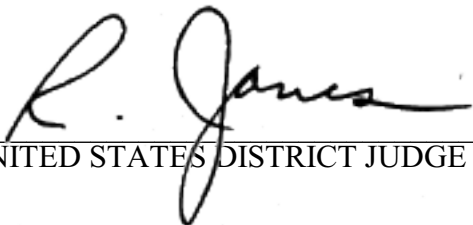
19 **IT IS FURTHER ORDERED** that, henceforth, petitioner shall serve upon the Attorney  
20 General of the State of Nevada a copy of every pleading, motion, or other document he submits for  
21 consideration by the court. Petitioner shall include with the original paper submitted for filing a  
22 certificate stating the date that a true and correct copy of the document was mailed to the Attorney  
23 General. The court may disregard any paper that does not include a certificate of service. After  
24 respondents appear in this action, petitioner shall make such service upon the particular Deputy Attorney  
25 General assigned to the case.

1           **IT IS FURTHER ORDERED** that any state court record exhibits filed by respondents  
2 herein shall be filed with a separate index of exhibits identifying the exhibits by number or letter. The  
3 CM/ECF attachments that are filed further shall be identified by the number or numbers (or letter or  
4 letters) of the exhibits in the attachment. The hard copy of any additional state court record exhibits  
5 shall be forwarded – for this case – to the staff attorneys in Reno.

6           **IT IS FURTHER ORDERED** that the Clerk shall **DETACH** and **FILE** petitioner's  
7 motion for appointment of counsel (ECF #1-3).

8           **IT IS FURTHER ORDERED** that petitioner's motion for appointment of counsel is  
9 **DENIED.**

10           Dated this 11th day of March, 2013.

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15           UNITED STATES DISTRICT JUDGE  
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